

AMENDED IN ASSEMBLY MAY 7, 2007
AMENDED IN ASSEMBLY APRIL 24, 2007
AMENDED IN ASSEMBLY APRIL 11, 2007
AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1689

Introduced by Assembly Member Lieber

February 23, 2007

An act to repeal and add Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code, relating to anatomical gifts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1689, as amended, Lieber. The Revised Uniform Anatomical Gifts *Gift* Act.

Existing law, the Uniform Anatomical Gift Act, regulates the making of anatomical gifts and the disposition of donated bodies and body parts.

This bill would repeal those provisions and would recast and reenact the revised provisions as the Uniform Anatomical Gift Act. By increasing the duties of local officers, including, but not limited to, the coroner, and by changing the definition of related crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.5 (commencing with Section 7150) of
2 Part 1 of Division 7 of the Health and Safety Code is repealed.

3 SEC. 2. Chapter 3.5 (commencing with Section 7150) is added
4 to Part 1 of Division 7 of the Health and Safety Code, to read:

5
6 CHAPTER 3.5. UNIFORM ANATOMICAL GIFT ACT

7
8 7150. This chapter shall be known, and may be cited, as the
9 Uniform Anatomical Gift Act.

10 7150.10. (a) As used in this chapter, the following terms have
11 the following meanings:

12 (1) "Adult" means an individual who is at least 18 years of age.

13 (2) "Agent" means an individual who meets either of the
14 following criteria:

15 (A) He or she is authorized to make health care decisions on
16 the principal's behalf by a power of attorney for health care.

17 (B) He or she is expressly authorized to make an anatomical
18 gift on the principal's behalf by any other record signed by the
19 principal.

20 (3) "Anatomical gift" means a donation of all or part of a human
21 body to take effect after the donor's death for the purpose of
22 transplantation, therapy, research, or education.

23 (4) "Decedent" means a deceased individual whose body or part
24 is or may be the source of an anatomical gift. The term includes a
25 stillborn infant and, subject to restrictions imposed by law other
26 than this chapter, a fetus.

27 (5) "Disinterested witness" means a witness other than the
28 spouse, child, parent, sibling, grandchild, grandparent, or guardian
29 of the individual who makes, amends, revokes, or refuses to make
30 an anatomical gift, or another adult who exhibited special care and

1 concern for the individual. The term does not include a person to
2 which an anatomical gift could pass under Section 7150.50.

3 (6) “Document of gift” means a donor card or other record used
4 to make an anatomical gift. The term includes a statement recorded
5 on the Donate Life California Organ and Tissue Registry or other
6 donor registry.

7 (6.5) “Domestic partner” means a person who is registered under
8 Section 297 of the Family Code, or otherwise recognized under
9 the law of any state as a domestic partner.

10 (7) “Donor” means an individual whose body or part is the
11 subject of an anatomical gift.

12 (8) “Donor registry” means a database that contains records of
13 anatomical gifts and amendments to or revocations of anatomical
14 gifts, including, but not limited to, the Donate Life California
15 Organ and Tissue Donor Registry.

16 (9) “Driver’s license” means a license or permit issued by the
17 Department of Motor Vehicles to operate a vehicle, whether or
18 not conditions are attached to the license or permit.

19 (10) “Eye bank” means a person that is licensed, accredited, or
20 regulated under federal or state law to engage in the recovery,
21 screening, testing, processing, storage, or distribution of human
22 eyes or portions of human eyes.

23 (11) “Guardian” means a person appointed by a court to make
24 decisions regarding the support, care, education, health, or welfare
25 of an individual. The term does not include a guardian ad litem.

26 (12) “Hospital” means a facility licensed as a hospital under the
27 law of any state or a facility operated as a hospital by the United
28 States, a state, or a subdivision of a state.

29 (13) “Identification card” means an identification card issued
30 by the Department of Motor Vehicles.

31 (14) “Know” means to have actual knowledge.

32 (15) “Minor” means an individual who is under 18 years of age.

33 (16) “Organ procurement organization” means a person
34 designated by the Secretary of the United States Department of
35 Health and Human Services as an organ procurement organization.

36 (17) “Parent” means a parent whose parental rights have not
37 been terminated.

38 (18) “Part” means an organ, an eye, or tissue of a human being.
39 The term does not include the whole body.

1 (19) “Person” means an individual, corporation, business trust,
2 estate, trust, partnership, limited liability company, association,
3 joint venture, public corporation, government or governmental
4 subdivision, agency, or instrumentality, or any other legal or
5 commercial entity.

6 (20) “Physician” means an individual authorized to practice
7 medicine or osteopathy under the law of any state.

8 (21) “Procurement organization” means an eye bank, organ
9 procurement organization, or tissue bank.

10 (22) “Prospective donor” means an individual who is dead or
11 near death and has been determined by a procurement organization
12 to have a part that could be medically suitable for transplantation,
13 therapy, research, or education. The term does not include an
14 individual who has made a refusal.

15 (23) “Reasonably available” means able to be contacted by a
16 procurement organization, without undue effort, and willing and
17 able to act in a timely manner consistent with existing medical
18 criteria necessary for the making of an anatomical gift.

19 (24) “Recipient” means an individual into whose body a
20 decedent’s part has been, or is intended to be, transplanted.

21 (25) “Record” means information that is inscribed on a tangible
22 medium or that is stored in an electronic or other medium and is
23 retrievable in perceivable form.

24 (26) “Refusal” means a record created under Section 7150.30
25 that expressly states an intent to bar other persons from making
26 an anatomical gift of an individual’s body or part.

27 (27) “Sign” means, to do either of the following with the present
28 intent to authenticate or adopt a record:

29 (A) Execute or adopt a tangible symbol.

30 (B) Attach to or logically associate with the record an electronic
31 symbol, sound, or process.

32 (28) “State” means a state of the United States, the District of
33 Columbia, Puerto Rico, the United States Virgin Islands, or any
34 territory or insular possession subject to the jurisdiction of the
35 United States.

36 (29) “Technician” means an individual determined to be
37 qualified to remove or process parts by an appropriate organization
38 that is licensed, accredited, or regulated under federal or state law.
39 The term includes an enucleator.

1 (30) "Tissue" means a portion of the human body other than
2 an organ or an eye. The term does not include blood, unless the
3 ~~blood is donated~~ *a blood sample is needed* for the purpose of
4 research or education.

5 (31) "Tissue bank" means a person that is licensed, accredited,
6 or regulated under federal or state law to engage in the recovery,
7 screening, testing, processing, storage, or distribution of tissue.

8 (32) "Transplant hospital" means a hospital that furnishes organ
9 transplants and other medical and surgical specialty services
10 required for the care of transplant patients.

11 (b) This chapter applies to an anatomical gift or amendment to,
12 revocation of, or refusal to make an anatomical gift, whenever
13 made.

14 7150.15. Subject to Section 7150.35, an anatomical gift of a
15 donor's body or part may be made during the life of the donor for
16 the purpose of transplantation, therapy, research, or education in
17 the manner provided in Section 7150.20 by any of the following
18 individuals:

19 (a) The donor, if the donor is an adult or if the donor is a minor
20 and is either of the following:

21 (1) An emancipated minor.

22 (2) Authorized to apply for a driver's license pursuant to Section
23 12814.6 of the Motor Vehicle Code or to register on the Donate
24 Life California Registry.

25 (b) An agent of the donor, unless the power of attorney for health
26 care or other record prohibits the agent from making an anatomical
27 gift.

28 (c) A parent of the donor, if the donor is an unemancipated
29 minor.

30 (d) The donor's guardian.

31 7150.20. (a) A donor may make an anatomical gift through
32 any of the following:

33 (1) By authorizing a statement or symbol indicating that the
34 donor has made an anatomical gift to be imprinted on the donor's
35 driver's license or identification card ~~or~~ *and* included on a donor
36 database registry.

37 (2) *Directly through the Donate Life California Registry Web*
38 *site.*

39 ~~(2)~~

40 (3) In a will.

1 ~~(3)~~

2 (4) During a terminal illness or injury of the donor, by any form
3 of communication addressed to at least two adults, at least one of
4 whom is a disinterested witness.

5 ~~(4)~~

6 (5) As provided in subdivision (b).

7 (b) A donor or other person authorized to make an anatomical
8 gift under Section 7150.15 may make a gift by a donor card or
9 other record signed by the donor or other person making the gift
10 or by authorizing that a statement or symbol, indicating that the
11 donor has made an anatomical gift, be included on a donor registry.
12 If the donor or other person is physically unable to sign a record,
13 the record may be signed by another individual at the direction of
14 the donor or other person and shall comply with all of the
15 following:

16 (1) Be witnessed by at least two adults, at least one of whom is
17 a disinterested witness, who have signed at the request of the donor
18 or the other person.

19 (2) State that it has been signed and witnessed as provided in
20 paragraph (1).

21 (c) Revocation, suspension, expiration, or cancellation of a
22 driver's license or identification card upon which an anatomical
23 gift is indicated does not invalidate the gift.

24 (d) An anatomical gift made by will takes effect upon the
25 donor's death whether or not the will is probated. Invalidation of
26 the will after the donor's death does not invalidate the gift.

27 7150.25. (a) Subject to Section 7150.35, a donor or other
28 person authorized to make an anatomical gift under Section
29 7150.15 may amend or revoke an anatomical gift by either of the
30 following:

31 (1) A record signed by any of the following and recorded in a
32 donor registry database:

33 (A) The donor.

34 (B) The other person.

35 (C) Subject to subdivision (b), another individual acting at the
36 direction of the donor or of the other person, if the donor or other
37 person is physically unable to sign.

38 (2) A later-executed document of gift that amends or revokes
39 a previous anatomical gift or portion of an anatomical gift, either
40 expressly or by inconsistency.

1 (b) A record signed pursuant to subparagraph (C) of paragraph
2 (1) of subdivision (a) shall comply with all of the following:

3 (1) It shall be witnessed by at least two adults, at least one of
4 whom is a disinterested witness, who have signed at the request
5 of the donor or the other person.

6 (2) It shall state that it has been signed and witnessed as provided
7 in paragraph (1).

8 (c) Subject to Section 7150.35, a donor or other person
9 authorized to make an anatomical gift under Section 7150.15 may
10 revoke an anatomical gift by the destruction of the document of
11 gift or cancellation of the document of gift on a donor database
12 registry, or the portion of the document of gift used to make the
13 gift, with the intent to revoke the gift.

14 (d) A donor may amend or revoke an anatomical gift that was
15 not made in a will by any form of communication during a terminal
16 illness or injury addressed to at least two adults, at least one of
17 whom is a disinterested witness.

18 (e) A donor who makes an anatomical gift in a will may amend
19 or revoke the gift in the manner provided for amendment or
20 revocation of wills or as provided in subdivision (a).

21 7150.30. (a) An individual may refuse to make an anatomical
22 gift of the individual's body or part by any of the following:

23 (1) A record signed by either of the following:

24 (A) The individual.

25 (B) Subject to subdivision (b), another individual acting at the
26 direction of the individual if the individual is physically unable to
27 sign.

28 (2) The individual's will, whether or not the will is admitted to
29 probate or invalidated after the individual's death.

30 (3) Any form of communication made by the individual during
31 the individual's terminal illness or injury addressed to at least two
32 adults, at least one of whom is a disinterested witness.

33 (b) A record signed pursuant to subparagraph (B) of paragraph
34 (1) of subdivision (a) shall comply with both of the following:

35 (1) It shall be witnessed by at least two adults, at least one of
36 whom is a disinterested witness, who have signed at the request
37 of the individual.

38 (2) It shall state that it has been signed and witnessed as provided
39 in paragraph (1).

1 (c) An individual who has made a refusal may amend or revoke
2 the refusal by any of the following:

3 (1) In the manner provided in subdivision (a) for making a
4 refusal.

5 (2) By subsequently making an anatomical gift pursuant to
6 Section 7150.20 that is inconsistent with the refusal.

7 (3) By destroying or canceling the record evidencing the refusal,
8 or the portion of the record used to make the refusal, with the intent
9 to revoke the refusal.

10 (d) Except as otherwise provided in subdivision (h) of Section
11 7150.35, in the absence of an express, contrary indication by the
12 individual set forth in the refusal, an individual's unrevoked refusal
13 to make an anatomical gift of the individual's body or part bars
14 all other persons from making an anatomical gift of the individual's
15 body or part.

16 (e) Notwithstanding any provision to the contrary, including,
17 but not limited to Section 7150.40, only an individual shall make
18 an anatomical gift of all or part of that individual's body or
19 pacemaker, if it is made known that the individual, at the time of
20 death, was a member of a religion, church, sect, or denomination
21 that relies solely upon prayer for healing of disease or that has
22 religious tenets that would be violated by the disposition of the
23 human body or parts or pacemakers for the purposes of
24 transplantation, therapy, research, or education.

25 7150.35. (a) Except as otherwise provided in subdivision (g)
26 and subject to subdivision (f), in the absence of an express, contrary
27 indication by the donor, a person other than the donor is barred
28 from making, amending, or revoking an anatomical gift of a
29 donor's body or part if the donor made an anatomical gift of the
30 donor's body or part under Section 7150.20 or an amendment to
31 an anatomical gift of the donor's body or part under Section
32 7150.25.

33 (b) A donor's revocation of an anatomical gift of the donor's
34 body or part under Section 7150.25 is not a refusal and does not
35 bar another person specified in Section 7150.15 or 7150.40 from
36 making an anatomical gift of the donor's body or part under Section
37 7150.20 or 7150.45.

38 (c) If a person other than the donor makes an unrevoked
39 anatomical gift of the donor's body or part under Section 7150.20
40 or an amendment to an anatomical gift of the donor's body or part

1 under Section 7150.25, another person may not make, amend, or
2 revoke the gift of the donor's body or part under Section 7150.45.

3 (d) A revocation of an anatomical gift of a donor's body or part
4 under Section 7150.25 by a person other than the donor does not
5 bar another person from making an anatomical gift of the body or
6 part under Section 7150.20 or 7150.45.

7 (e) In the absence of an express, contrary indication by the donor
8 or other person authorized to make an anatomical gift under Section
9 7150.15, an anatomical gift of a part is neither a refusal to give
10 another part nor a limitation on the making of an anatomical gift
11 of another part at a later time by the donor or another person.

12 (f) In the absence of an express, contrary indication by the donor
13 or other person authorized to make an anatomical gift under Section
14 7150.15, an anatomical gift of a part for one or more of the
15 purposes set forth in Section 7150.15 is not a limitation on the
16 making of an anatomical gift of the part for any of the other
17 purposes by the donor or any other person under Section 7150.20
18 or 7150.45.

19 (g) If a donor who is an unemancipated minor dies, a parent of
20 the donor who is reasonably available may revoke or amend an
21 anatomical gift of the donor's body or part.

22 (h) If an unemancipated minor who signed a refusal dies, a
23 parent of the minor who is reasonably available may revoke the
24 minor's refusal.

25 7150.40. (a) Subject to subdivisions (b) and (c), and unless
26 barred by Section 7150.30 or 7150.35, an anatomical gift of a
27 decedent's body or part for purpose of transplantation, therapy,
28 research, or education may be made by any member of the
29 following classes of persons who is reasonably available, in the
30 following order of priority:

31 (1) An agent of the decedent at the time of death who could
32 have made an anatomical gift under paragraph (2) of subdivision
33 (a) of Section 7150.15 immediately before the decedent's death.

34 (2) The spouse or domestic partner of the decedent.

35 (3) Adult children of the decedent.

36 (4) Parents of the decedent.

37 (5) Adult siblings of the decedent.

38 (6) Adult grandchildren of the decedent.

39 (7) Grandparents of the decedent.

1 (8) An adult who exhibited special care and concern for the
2 decedent.

3 (9) The persons who were acting as the guardians or
4 conservators of the person of the decedent at the time of death.

5 (10) (A) Any other person having the authority to dispose of
6 the decedent's body, including, but not limited, to a coroner,
7 medical examiner, or hospital administrator, provided that
8 reasonable effort has been made to locate and inform persons listed
9 in paragraphs (1) to (9), inclusive, of their option to make, or object
10 to making, an anatomical gift.

11 (B) Except in the case where the useful life of the part does not
12 permit, a reasonable effort shall be deemed to have been made
13 when a search for the persons has been underway for at least 12
14 hours. The search shall include a check of local police missing
15 persons records, examination of personal effects, and the
16 questioning of any persons visiting the decedent before his or her
17 death or in the hospital, accompanying the decedent's body, or
18 reporting the death, in order to obtain information that might lead
19 to the location of any persons listed.

20 (b) If there is more than one member of a class listed in
21 paragraph (1), (3), (4), (5), (6), (7), or (9) of subdivision (a) entitled
22 to make an anatomical gift, an anatomical gift may be made by a
23 member of the class unless that member or a person to which the
24 gift may pass under Section 7150.50 knows of an objection by
25 another member of the class. If an objection is known, the gift may
26 be made only by a majority of the members of the class who are
27 reasonably available.

28 (c) A person shall not make an anatomical gift if, at the time of
29 the decedent's death, a person in a prior class under subdivision
30 (a) is reasonably available to make, or to object to the making of,
31 an anatomical gift.

32 7150.45. (a) A person authorized to make an anatomical gift
33 under Section 7150.40 may make an anatomical gift by a document
34 of gift signed by the person making the gift or by that person's
35 oral communication that is electronically recorded or is
36 contemporaneously reduced to a record and signed by the
37 individual receiving the oral communication.

38 (b) Subject to subdivision (c), an anatomical gift by a person
39 authorized under Section 7150.40 may be amended or revoked
40 orally or in a record by any member of a prior class who is

1 reasonably available. If more than one member of the prior class
2 is reasonably available, the gift made by a person authorized under
3 Section 7150.40 may be amended or revoked as follows:

4 (1) Amended only if a majority of the reasonably available
5 members agree to the amending of the gift.

6 (2) Revoked only if a majority of the reasonably available
7 members agree to the revoking of the gift or if they are equally
8 divided as to whether to revoke the gift.

9 (c) A revocation under subdivision (b) is effective only if, before
10 an incision has been made to remove a part from the donor's body
11 or before invasive procedures have begun to prepare the recipient,
12 the procurement organization, transplant hospital, or physician or
13 technician knows of the revocation.

14 7150.50. (a) An anatomical gift may be made to any of the
15 following persons named in the document of gift:

16 (1) A hospital, accredited medical school, dental school, college,
17 or university, organ procurement organization, or other appropriate
18 person, for research or education.

19 (2) Subject to subdivision (b), an individual designated by the
20 person making the anatomical gift if the individual is the recipient
21 of the part.

22 (3) An eye bank, or tissue bank.

23 (b) If an anatomical gift to an individual under paragraph (2)
24 of subdivision (a) cannot be transplanted into the individual, the
25 part passes in accordance with subdivision (g) in the absence of
26 an express, contrary indication by the person making the anatomical
27 gift.

28 (c) If an anatomical gift of one or more specific parts, or of all
29 parts, is made in a document of gift that does not name a person
30 described in subdivision (a) but identifies the purpose for which
31 an anatomical gift may be used, all of the following rules shall
32 apply:

33 (1) If the part is an eye and the gift is for the purpose of
34 transplantation or therapy, the gift passes to the appropriate eye
35 bank.

36 (2) If the part is tissue and the gift is for the purpose of
37 transplantation or therapy, the gift passes to the appropriate tissue
38 bank.

1 (3) If the part is an organ and the gift is for the purpose of
2 transplantation or therapy, the gift passes to the appropriate organ
3 procurement organization as custodian of the organ.

4 (4) If the part is an organ, an eye, or tissue and the gift is for
5 the purpose of research or education, the gift passes to the
6 appropriate procurement organization.

7 (d) For the purpose of subdivision (c), if there is more than one
8 purpose of an anatomical gift set forth in the document of gift but
9 the purposes are not set forth in any priority, the gift shall be used
10 for transplantation or therapy, if suitable. If the gift cannot be used
11 for transplantation or therapy, the gift may be used for research or
12 education.

13 (e) If an anatomical gift of one or more specific parts is made
14 in a document of gift that does not name a person described in
15 subdivision (a) and does not identify the purpose of the gift, the
16 gift shall be used only for transplantation or therapy, and the gift
17 passes in accordance with subdivision (g).

18 (f) If a document of gift specifies only a general intent to make
19 an anatomical gift by words such as “donor,” “organ donor,” or
20 “body donor,” or by a symbol or statement of similar import, the
21 gift shall be used only for transplantation or therapy, and the gift
22 passes in accordance with subdivision (g).

23 (g) For purposes of subdivisions (b), (e), and (f) all of the
24 following rules shall apply:

25 (1) If the part is an eye, the gift passes to the appropriate eye
26 bank.

27 (2) If the part is tissue, the gift passes to the appropriate tissue
28 bank.

29 (3) If the part is an organ, the gift passes to the appropriate organ
30 procurement organization as custodian of the organ.

31 (h) An anatomical gift of an organ for transplantation or therapy,
32 other than an anatomical gift under paragraph (2) of subdivision
33 (a), passes to the organ procurement organization as custodian of
34 the organ.

35 (i) If an anatomical gift does not pass pursuant to subdivisions
36 (a) to (h), inclusive, or the decedent’s body or part is not used for
37 transplantation, therapy, research, or education, custody of the
38 body or part passes to the person under obligation to dispose of
39 the body or part.

1 (j) A person shall not accept an anatomical gift if the person
2 knows that the gift was not effectively made under Section 7150.20
3 or 7150.45 or if the person knows that the decedent made a refusal
4 under Section 7150.30 that was not revoked. For purposes of this
5 subdivision, if a person knows that an anatomical gift was made
6 on a document of gift, the person is deemed to know of any
7 amendment or revocation of the gift or any refusal to make an
8 anatomical gift on the same document of gift.

9 (k) Except as otherwise provided in paragraph (2) of subdivision
10 (a), nothing in this chapter affects the allocation of organs for
11 transplantation or therapy.

12 7150.55. (a) All of the following persons shall make a
13 reasonable search of an individual who the person reasonably
14 believes is dead or near death for a document of gift or other
15 information identifying the individual as a donor or as an individual
16 who made a refusal:

17 (1) A law enforcement officer, firefighter, paramedic, or other
18 emergency rescuer finding the individual.

19 (2) If no other source of the information is immediately
20 available, a hospital, as soon as practical after the individual's
21 arrival at the hospital.

22 (b) If a document of gift or a refusal to make an anatomical gift
23 is located by the search required by paragraph (1) of subdivision
24 (a) and the individual or deceased individual to whom it relates is
25 taken to a hospital, the person responsible for conducting the search
26 shall send the document of gift or refusal to the hospital.

27 (c) A person is not subject to criminal or civil liability for failing
28 to discharge the duties imposed by this section, but may be subject
29 to administrative sanctions.

30 7150.60. (a) A document of gift need not be delivered during
31 the donor's lifetime to be effective.

32 (b) Upon or after an individual's death, a person in possession
33 of a document of gift or a refusal to make an anatomical gift with
34 respect to the individual shall allow examination and copying of
35 the document of gift or refusal by a person authorized to make or
36 object to the making of an anatomical gift with respect to the
37 individual or by a person to which the gift could pass under Section
38 7150.50.

39 7150.65. (a) When a hospital refers an individual at or near
40 death to a procurement organization, the organization shall make

1 a reasonable search of the records of the Donate Life California
2 Organ and Tissue Donor Registry and any donor registry that it
3 knows exists for the geographical area in which the individual
4 resides to ascertain whether the individual has made an anatomical
5 gift.

6 (b) A procurement organization shall be allowed reasonable
7 access to information in the records of the Donate Life California
8 Organ and Tissue Donor Registry to ascertain whether an
9 individual who is at or near death is a donor.

10 (c) When a hospital refers an individual at or near death to a
11 procurement organization, the organization may conduct any
12 reasonable examination necessary to ensure the medical suitability
13 of a part that is or could be the subject of an anatomical gift for
14 transplantation, therapy, research, or education from a donor or a
15 prospective donor. During the examination period, measures
16 necessary to ensure the medical suitability of the part may not be
17 withdrawn unless the hospital or procurement organization knows
18 that the individual expressed a contrary intent.

19 (d) Unless prohibited by law other than this chapter, at any time
20 after a donor's death, the person to which a part passes under
21 Section 7150.50 may conduct any reasonable examination
22 necessary to ensure the medical suitability of the body or part for
23 its intended purpose.

24 (e) Unless prohibited by law other than this chapter, an
25 examination under subdivision (c) or (d) may include an
26 examination of all medical and dental records of the donor or
27 prospective donor.

28 (f) Upon the death of a minor who was a donor or had signed
29 a refusal, unless a procurement organization knows the minor is
30 emancipated, the procurement organization shall conduct a
31 reasonable search for the parents of the minor and provide the
32 parents with an opportunity to revoke or amend the anatomical
33 gift or revoke the refusal.

34 (g) Upon referral by a hospital under subdivision (a), a
35 procurement organization shall make a reasonable search for any
36 person listed in Section 7150.40 having priority to make an
37 anatomical gift on behalf of a prospective donor. If a procurement
38 organization receives information that an anatomical gift to any
39 other person was made, amended, or revoked, it shall promptly
40 advise the other person of all relevant information.

1 (h) Subject to subdivision (i) of Section 7150.50, and Section
2 7151.20, the rights of the person to which a part passes under
3 Section 7150.50 are superior to the rights of all others with respect
4 to the part. The person may accept or reject an anatomical gift in
5 whole or in part. Subject to the terms of the document of gift and
6 this chapter, a person that accepts an anatomical gift of an entire
7 body may allow embalming, burial or cremation, and use of
8 remains in a funeral service. If the gift is of a part, the person to
9 which the part passes under Section 7150.50, upon the death of
10 the donor and before embalming, burial, or cremation, shall cause
11 the part to be removed without unnecessary mutilation.

12 (i) Neither the physician who attends the decedent at death nor
13 the physician who determines the time of the decedent's death
14 may participate in the procedures for removing or transplanting a
15 part from the decedent.

16 (j) A physician or technician may remove a donated part from
17 the body of a donor that the physician or technician is qualified to
18 remove.

19 7150.70. Each hospital in this state shall enter into agreements
20 or affiliations with procurement organizations for coordination of
21 procurement and use of anatomical gifts.

22 7150.75. (a) Except as otherwise provided in subdivision (b),
23 a person that, for valuable consideration, knowingly purchases or
24 sells a part for transplantation or therapy if removal of a part from
25 an individual is intended to occur after the individual's death is
26 guilty of a felony and upon conviction is subject to a fine not
27 exceeding fifty thousand dollars (\$50,000) or imprisonment not
28 exceeding five years, or both the fine and imprisonment.

29 (b) A person may charge a reasonable amount for the removal,
30 processing, preservation, quality control, storage, transportation,
31 implantation, or disposal of a part.

32 (c) A person that, in order to obtain a financial gain, intentionally
33 falsifies, forges, conceals, defaces, or obliterates a document of
34 gift, an amendment or revocation of a document of gift, or a refusal
35 is guilty of a felony and upon conviction is subject to a fine not
36 exceeding fifty thousand dollars (\$50,000) or imprisonment not
37 exceeding five years, or both the fine and imprisonment.

38 7150.80. (a) A person that acts in accordance with this chapter
39 or with the applicable anatomical gift law of another state, or

1 attempts in good faith to do so, is not liable for the act in a civil
2 action, criminal prosecution, or administrative proceeding.

3 (b) Neither the person making an anatomical gift nor the donor's
4 estate is liable for any injury or damage that results from the
5 making or use of the gift.

6 (c) In determining whether an anatomical gift has been made,
7 amended, or revoked under this chapter, a person may rely upon
8 representations of an individual listed in paragraphs (2) to (8),
9 inclusive, of subdivision (a) of Section 7150.40 relating to the
10 individual's relationship to the donor or prospective donor, unless
11 the person knows that the representation is untrue.

12 7150.85. (a) A document of gift is valid if executed in
13 accordance with any of the following:

14 (1) This chapter.

15 (2) The laws of the state or country where it was executed.

16 (3) The laws of the state or country where the person making
17 the anatomical gift was domiciled, has a place of residence, or was
18 a national at the time the document of gift was executed.

19 (b) If a document of gift is valid under this section, the law of
20 this state governs the interpretation of the document of gift.

21 (c) A person may presume that a document of gift or amendment
22 of an anatomical gift is valid unless that person knows that it was
23 not validly executed, or that it was revoked.

24 7150.90. (a) The California organ procurement organizations
25 designated pursuant to Section 273 and following Title 42 of the
26 United States Code, are hereby authorized to establish a
27 not-for-profit entity that shall be designated the California Organ
28 and Tissue Donor Registrar, which shall establish and maintain
29 the California Organ and Tissue Donor Registry, to be known as
30 the Donate Life California Organ and Tissue Donor Registry. The
31 registry shall contain information regarding persons who have
32 identified themselves as organ and tissue donors upon their death.
33 The registrar shall be responsible for developing methods to
34 increase the number of donors who enroll in the registry.

35 (b) The registrar shall make available to the federally designated
36 organ procurement organizations (OPOs) in California and the
37 state licensed tissue and eye banks information contained in the
38 registry regarding potential donors on a 24-hour-a-day,
39 seven-day-a-week basis. This information shall be used to expedite

1 a match between identified organ and tissue donors and potential
2 recipients.

3 (c) The registrar may receive voluntary contributions to support
4 the registry and its activities.

5 (d) The registrar shall submit an annual written report to the
6 State Public Health Officer and the Legislature that includes all
7 of the following:

8 (1) The number of donors on the registry.

9 (2) The changes in the number of donors on the registry.

10 (3) The general characteristics of donors as may be determined
11 by information provided on the donor registry forms pursuant to
12 Sections 12811 and 13005 of the Vehicle Code.

13 7151.10. (a) As used in this section the following terms have
14 the following meanings:

15 (1) "Advance health care directive" means a power of attorney
16 for health care or a record signed by a prospective donor containing
17 the prospective donor's direction concerning a health care decision
18 for the prospective donor.

19 (2) "Declaration" means a record signed by a prospective donor
20 specifying the circumstances under which a life support system
21 may be withheld or withdrawn from the prospective donor.

22 (3) "Health care decision" means any decision made regarding
23 the health care of the prospective donor.

24 (b) If a prospective donor has a declaration or advance health
25 care directive and the terms of the declaration or directive and the
26 express or implied terms of a potential anatomical gift are in
27 conflict with regard to the administration of measures necessary
28 to ensure the medical suitability of a part for transplantation or
29 therapy, the prospective donor's attending physician and
30 prospective donor shall confer to resolve the conflict. If the
31 prospective donor is incapable of resolving the conflict, an agent
32 acting under the prospective donor's declaration or directive, or,
33 if none or the agent is not reasonably available, another person
34 authorized by law other than this chapter to make health care
35 decisions on behalf of the prospective donor, shall act for the donor
36 to resolve the conflict. The conflict shall be resolved as
37 expeditiously as possible. Information relevant to the resolution
38 of the conflict may be obtained from the appropriate procurement
39 organization and any other person authorized to make an
40 anatomical gift for the prospective donor under Section 7150.40.

1 Before resolution of the conflict, measures necessary to ensure the
2 medical suitability of the part shall not be withheld or withdrawn
3 from the prospective donor if withholding or withdrawing the
4 measures is not contraindicated by appropriate end-of-life care.

5 7151.15. (a) A county coroner shall cooperate with
6 procurement organizations to maximize the opportunity to recover
7 anatomical gifts for the purpose of transplantation, therapy,
8 research, or education.

9 (b) If a county coroner receives notice from a procurement
10 organization that an anatomical gift might be available or was
11 made with respect to a decedent whose body is under the
12 jurisdiction of the coroner and a post mortem examination is going
13 to be performed, unless the coroner denies recovery in accordance
14 with Section 7151.20, the coroner or designee shall conduct a
15 postmortem examination of the body or the part in a manner and
16 within a period compatible with its preservation for the purposes
17 of the gift.

18 (c) A part shall not be removed from the body of a decedent
19 under the jurisdiction of a coroner for transplantation, therapy,
20 research, or education unless the part is the subject of an anatomical
21 gift. The body of a decedent under the jurisdiction of the coroner
22 shall not be delivered to a person for research or education unless
23 the body is the subject of an anatomical gift. This subdivision does
24 not preclude a coroner from performing the medicolegal
25 investigation upon the body or parts of a decedent under the
26 jurisdiction of the coroner.

27 7151.20. (a) On request from a qualified procurement
28 organization, the county coroner may permit the removal of organs
29 that constitute an anatomical gift from a decedent who died under
30 circumstances requiring an inquest by the coroner.

31 (b) If no autopsy is required, the organs to be removed may be
32 released to the qualified procurement organization.

33 (c) If an autopsy is required and the county coroner determines
34 that the removal of the organs will not interfere with the subsequent
35 course of an investigation or autopsy, the organs may be released
36 for removal. The autopsy shall be performed following the removal
37 of the organs.

38 (d) If a county coroner is considering withholding one or more
39 organs of a potential donor for any reason, the county coroner, or
40 his or her designee, upon request from a qualified organ

1 procurement organization, shall be present during the procedure
2 to remove the organs. The county coroner, or his or her designee,
3 may request a biopsy of those organs or deny removal of the organs
4 if necessary. If the county coroner, or his or her designee, denies
5 removal of the organs, the county coroner may do any of the
6 following:

7 (1) In the investigative report, explain in writing the reasons for
8 the denial.

9 (2) Provide the explanation to the qualified organ procurement
10 organization.

11 (e) If the county coroner, or his or her designee, is present during
12 the removal of the organs, the qualified procurement organization
13 requesting the removal of the organ shall reimburse the county of
14 the coroner, or his or her designee, for the actual costs incurred in
15 performing the duty specified in subdivision (d), if reimbursement
16 is requested by the county coroner. The payment shall be applied
17 to the additional costs incurred by the county coroner's office in
18 performing the duty specified in subdivision (d).

19 (f) The health care professional removing organs from a
20 decedent who died under circumstances requiring an inquest shall
21 file with the county coroner a report detailing the condition of the
22 organs removed and their relationship, if any, to the cause of death.

23 7151.25. In applying and construing this uniform act,
24 consideration shall be given to the need to promote uniformity of
25 the law with respect to its subject matter among states that enact
26 it.

27 7151.30. This act modifies, limits, and supersedes the
28 Electronic Signatures in Global and National Commerce Act (15
29 U.S.C. Sec. 7001 et seq.), but does not modify, limit or supersede
30 Section 101(a) of that act (15 U.S.C. Sec. 7001), or authorize
31 electronic delivery of any of the notices described in Section 103(b)
32 of that act (15 U.S.C. Sec. 7003(b)).

33 7151.35. (a) No hospital, physician and surgeon, procurement
34 organization, or other person shall determine the ultimate recipient
35 of an anatomical gift based upon a potential recipient's physical
36 or mental disability, except to the extent that the physical or mental
37 disability has been found by a physician and surgeon, following
38 a case-by-case evaluation of the potential recipient, to be medically
39 significant to the provision of the anatomical gift.

(b) Subdivision (a) shall apply to each part of the organ transplant process. The organ transplant process includes, but is not limited to, all of the following:

- (1) The referral from a primary care provider to a specialist.
- (2) The referral from a specialist to a transplant center.
- (3) The evaluation of the patient for the transplant by the transplant center.
- (4) The consideration of the patient for placement on the official waiting list.

(c) A person with a physical or mental disability shall not be required to demonstrate postoperative independent living abilities in order to have access to a transplant if there is evidence that the person will have sufficient, compensatory support and assistance.

(d) The court shall accord priority on its calendar and handle expeditiously any action brought to seek any remedy authorized by law for purposes of enforcing compliance with this section.

(e) This section shall not be deemed to require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

(f) As used in this section “disabilities” has the same meaning as used in the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq., P.L. 101-336).

7151.40. (a) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician and surgeon.

(b) Following the final disposition of the remains of the donor, upon request of a person specified in Section 7100, the donee shall return the cremated remains of the donor at no cost to the person specified in Section 7100, unless the donor has previously designated otherwise in the document of gift. A person who knowingly returns the cremated remains of a person other than the donor to a person specified in Section 7100 shall be punished by imprisonment in the county jail for not more than one year.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the

1 Government Code, or changes the definition of a crime within the
2 meaning of Section 6 of Article XIII B of the California
3 Constitution.

4 However, if the Commission on State Mandates determines that
5 this act contains other costs mandated by the state, reimbursement
6 to local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

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